

IN THE MATTER OF
FORMER MCCLELLAN AFB

Respondent

McClellan Business Park, LLC

ADMINISTRATIVE ORDER ON CONSENT
FOR RI/FS AND RD/RA FOR CLEANUP
OF PORTIONS OF THE FORMER MCCLELLAN AFB
U.S. EPA Region 9

CERCLA Docket No. 2006-27

Proceeding under Sections 104, 106 and 122 of the Comprehensive Environmental Response,
Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9606, and 9622.

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**ADMINISTRATIVE ORDER ON CONSENT
FOR CLEANUP OF PORTIONS OF FORMER MCCLELLAN AIR FORCE
BASE**

I. JURISDICTION

1. This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA"), the California Department of Toxic Substances Control ("DTSC"), the California Regional Water Quality Control Board, Central Valley Region ("RWQCB"), and McClellan Business Park, LLC ("Respondent"). The Order concerns the preparation and performance of removal actions, one or more remedial investigations and feasibility studies ("RI/FS") and one or more remedial designs and remedial actions ("RD/RA") for certain contaminants present on portions of the former McClellan Air Force Base ("AFB") located at McClellan, California ("Site") and the reimbursement for future response costs incurred by EPA, DTSC and RWQCB in connection with such CERCLA response actions.

2. This Order is issued under the authority vested in the President of the United States by Sections 104, 106 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9606 and 9622 ("CERCLA"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (Jan. 29, 1987), and further delegated to Regional Administrators on May 11, 1994, by EPA Delegation Nos. 14-14-C and 14-14-D. This authority was further redelegated by the Regional Administrator of EPA Region 9 to the Superfund Branch Chief by Regional Delegation R9 1290.15, dated September 29, 1997. DTSC and the RWQCB sign this Order pursuant to relevant provisions of CERCLA Section 120 regarding state participation in federal facility cleanups, and Section 121(f), 42 U.S.C. §§ 9620 and 9621(f), and applicable provisions of 40 C.F.R. Subpart F, and the California Health and Safety Code, Division 20, Chapters 6.5, 6.67, 6.75, and 6.8, and the California Water Code, Division 7. The United States Department of Justice is approving and signing this Order pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States.

3. Respondent has agreed to undertake the cleanup of a portion (the "Property") of the former McClellan AFB, which property is more specifically depicted in Appendix A to this Order. This cleanup is currently being undertaken by the U.S. Air Force ("Air Force") pursuant to the terms of the McClellan AFB Federal Facilities Agreement, dated May 2, 1990 ("FFA"). The FFA is being amended to provide in general that the obligations of the Air Force to conduct certain portions of the cleanup will be suspended so long as the Respondent complies with all requirements of this Order and other conditions described in the Amended FFA are met. In the event that EPA, in consultation with DTSC and RWQCB, shall determine that the Respondent is in Default as defined in Section XXXII of this Order, the responsibility for any remaining response actions shall

revert to the Air Force and shall be undertaken by the Air Force in accordance with the terms and conditions of the Amended FFA.

4. Respondent represents that it is a bona fide prospective purchaser ("BFPP") with respect to the Property as defined by section 101(40) of CERCLA, 42 U.S.C. § 9601(40), that it has and will continue to comply with section 101(40) during its ownership of the Property, and thus qualifies for the protection from liability under CERCLA set forth in section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to the Property. In view, however, of the complex nature and significant extent of the Work to be performed by Respondent at the Property, and the risk of claims under CERCLA being asserted against Respondent notwithstanding section 107(r)(1) as a consequence of Respondent's activities at the Property pursuant to this Order, one of the purposes of this Order is to resolve, subject to the reservations and limitations contained in Section XXVI (Reservations of Rights by EPA), any potential liability of Respondent under CERCLA for Existing Contamination, as defined in Paragraph 13 below.

5. EPA, DTSC, RWQCB and Respondent recognize that this Order has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Order do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the Findings of Fact, and Conclusions of Law and Determinations in Sections V and VI of this Order. Respondent agrees to comply with and be bound by the terms of this Order and further agrees that it will not contest the basis or validity of this Order or its terms.

II. PARTIES BOUND

6. This Order applies to and is binding upon EPA, DTSC, RWQCB and upon Respondent and its successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Order, except as provided in Paragraph 20.

7. Respondent shall be responsible for carrying out all activities required by this Order in a timely manner and shall be subject to all stipulated penalties for failure to meet the terms and conditions of this Order.

8. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondent shall be responsible for any noncompliance with this Order by its contractors, subcontractors and representatives.

9. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to execute and legally bind Respondent to this Order.

III. STATEMENT OF PURPOSE

10. In entering into this Order, the objectives of EPA, DTSC, RWQCB and Respondent, in addition to the purpose identified in Paragraph 4 above, are: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from the Property (excluding Retained Conditions) by conducting one or more Remedial Investigations ("RIs") as more specifically set forth in the Statement of Work ("SOW") attached as Appendix B to this Order; (b) to identify and evaluate remedial alternatives to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from the Property (excluding Retained Conditions), by conducting a Feasibility Study ("FS") as more specifically set forth in the SOW; (c) to provide for EPA's selection of one or more remedial actions in one or more records of decision ("RODs") and to provide for DTSC's and RWQCB's participation in any RI/FS and ROD process to ensure consideration, consistent with CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 ("NCP"), of any DTSC or RWQCB concerns with respect to the selection of any remedial action; (d) to provide for the design, construction, and implementation of remedial actions and operation and maintenance at the Property by Respondent necessary to remediate the Property (excluding Retained Conditions), to achieve all applicable or relevant and appropriate requirements ("ARARs"), and other Performance Standards described in any ROD(s) or other decision documents issued by EPA; (e) to provide for the payment of response and oversight costs incurred by EPA, DTSC and RWQCB with respect to this Order, except that neither EPA, DTSC, nor the RWQCB will seek reimbursement from Respondent for any response and oversight costs already paid to them from a Department of Defense funding source; and (f) to fulfill a portion of the required assurances under the CERCLA 120(h)(3)(C) covenant deferral process. Respondent also agrees to address remediation of Waste Material as required by DTSC and/or RWQCB, where such Waste Material is not hazardous substances, pollutants, or contaminants.

11. The Air Force has entered into an Environmental Services Cooperative Agreement ("ESCA") with Sacramento County, pursuant to which Sacramento County has agreed to perform certain environmental services related to the Property. Such environmental services include CERCLA response actions at the Property, but exclude Retained Conditions, which are described in Paragraph 13, below. Sacramento County and the Respondent have entered into separate agreements, pursuant to which Respondent shall perform the environmental services on behalf of Sacramento County and Respondent shall become the owner of the Property (collectively, "McClellan Remediation Agreement"). This Order requires the performance of those environmental services, as well as other response actions, at the Property under the oversight of EPA, DTSC, and RWQCB.

12. The Work conducted under this Order is subject to approval by EPA, after

consultation with DTSC and RWQCB. For purposes of this Order, consultation with DTSC and RWQCB shall include, but not be limited to, simultaneous receipt by and a reasonable opportunity to review and comment on by DTSC and RWQCB of all documents and deliverables (the reasonable review time for each document/deliverable will be determined by EPA before or upon receipt of the document/deliverable) required to be submitted by Respondent under this Order; opportunity to participate in all meetings among the Parties concerning the Property; and to participate in dispute resolution as provided by Sections XXII and XXIII of this Order. If DTSC concurs with the remedy selected by EPA, DTSC may sign the Record of Decision to indicate its concurrence. Respondent shall provide all information appropriate and necessary to assess Property conditions and evaluate alternatives to the extent necessary to select a remedy that will be consistent with CERCLA and the NCP. Respondent shall conduct all Work under this Order in compliance with CERCLA, the NCP, and all applicable EPA guidance, policies, and procedures.

IV. DEFINITIONS

13. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

“Amended FFA” shall mean Amendment No. 1 to the McClellan AFB Federal Facilities Agreement, dated _____.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

“Covenant Deferral Request” shall mean the document prepared in accordance with CERCLA Section 120(h)(3)(C), which provides the basis for the deferral by EPA, with the concurrence of the State, of the CERCLA covenant with respect to the Property.

“Day” shall mean a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than a Saturday, Sunday, or State or Federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or State or Federal holiday, the period shall run until the close of business of the next working day.

“DTSC” shall mean the Department of Toxic Substances Control and any successor departments or agencies of the State.

“DTSC Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that DTSC incurs in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, or overseeing this Order including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, costs of participating in community relations meetings, legal or enforcement costs, costs to secure or implement institutional controls or operation and maintenance, including, but not limited to, the cost of attorney time and any monies paid

to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation, costs for emergency response, or the costs incurred by DTSC in enforcing the terms of the Order, including all costs incurred in connection with Dispute Resolution pursuant to Sections XXII and XXIII in the Order.

"Effective Date" shall be the effective date of this Order as provided in Section XXXX.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"ESCA" shall mean the Environmental Services Cooperative Agreement entered into by the Air Force and Sacramento County for the Property, dated ____.

"Existing Contamination" shall mean:

- 1) any hazardous substances, pollutants or contaminants present or existing on or under the Property as of the Effective Date;
- 2) any hazardous substances, pollutants or contaminants that migrated from the Property prior to the Effective Date; and
- 3) any hazardous substances, pollutants or contaminants presently at the Site that migrate onto or under or from the Property after the Effective Date.

Existing Contamination includes, but is not limited to, Retained Conditions.

"FFA" shall mean the McClellan AFB Federal Facilities Agreement, dated July 23, 1990.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the EPA incurs in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, overseeing, or enforcing this Order, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, costs of establishing and maintaining the administrative record, or participating in community relations meetings, the costs incurred pursuant to Section XII (Access and Institutional Controls), including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation, costs for emergency response, or the costs incurred by EPA in enforcing the terms of the Order, including all costs incurred in connection with Dispute Resolution pursuant to Sections XXII and XXIII in the Order.

"Insured Unknown Conditions" shall mean Unknown Conditions limited to and only to the extent that the cost of performing response actions for the Unknown Condition is insured and actually funded by the environmental insurance policies referenced in Paragraph 60. "Insured Unknown Conditions" also includes a specific Unknown Condition that otherwise would have been an Insured Unknown Condition by the environmental insurance policies but coverage was denied by the insurance provider solely due to the failure of Sacramento County, the Respondent, or the named insured to

comply with any requirement or requirements set forth in the environmental insurance policies with regard to the subject claim or actions by Sacramento County, Respondent, or the named insured that caused an exclusion from the environmental insurance policies; provided, however, the inclusion of such Unknown Condition as an Insured Unknown Condition shall be limited to the specific costs which would have been funded by the environmental insurance policies but for such failure by Sacramento County, Respondent and/or the named insured thereunder.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

“Institutional controls” shall mean non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure to contamination and/or protect the integrity of a remedy by limiting land and/or resource use. Examples of institutional controls include easements and covenants, zoning restrictions, special building permit requirements, and well drilling prohibitions.

“Known Conditions” shall mean those environmental conditions at the Property set forth in Appendix D (Known Conditions Documentation) and do not include Retained Conditions or Unknown Conditions.

“McClellan AFB Special Account” shall mean the special account established at the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Operation and Maintenance” or “O & M” shall mean all activities required to maintain the effectiveness of the Remedial Action(s) as required under the Operation and Maintenance Plan approved or developed by EPA, in consultation with DTSC and RWQCB, pursuant to this Order and the Statement of Work.

“Order” shall mean this Administrative Order on Consent, the SOW, all appendices attached hereto (listed in Section XXXVI) and all documents incorporated by reference into this document, including without limitation EPA-approved submissions. EPA-approved submissions (other than progress reports) are incorporated into and become a part of the Order upon approval by EPA. In the event of conflict between this Order and any appendix or other incorporated documents, this Order shall control.

“Paragraph” shall mean a portion of this Order identified by an Arabic numeral or an upper case letter.

“Parties” shall mean EPA, DTSC, RWQCB and the Respondent.

“Performance Standards” shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in the ROD.

"Property" shall mean that portion of the McClellan AFB Superfund Site which Respondent has agreed to acquire and remediate in accordance with this Order, encompassing four parcels of property totaling approximately 62 acres, described in Appendix A and depicted generally on the map attached as Appendix B.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.* (also known as the Resource Conservation and Recovery Act).

"Record of Decision" or "ROD" shall mean the Record of Decision or Records of Decision relating to the cleanup of the Property to be signed by the Regional Administrator, EPA Region 9, or his/her delegate, including all attachments thereto, after consultation with DTSC and RWQCB.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Respondent to implement the ROD(s), in accordance with the SOW and the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA, after consultation with DTSC and RWQCB.

"Remedial Action Work Plan" shall mean the document developed pursuant to Paragraph 29 of this Order and approved or modified by EPA, after consultation with DTSC and RWQCB, and any amendments thereto.

"Remedial Design" shall mean those activities to be undertaken by the Respondent to develop the final plans and specifications for the Remedial Action(s) pursuant to the Remedial Design Work Plan.

"Remedial Design Work Plan" shall mean the document developed pursuant to Paragraph 28 of this Order and approved or modified by EPA, after consultation with DTSC and RWQCB, and any amendments thereto.

"Retained Conditions" shall mean:

- 1) Existing contamination, pollution, or other environmental conditions outside the Property, including contamination or pollution that, other than described in 6) below, is not on the Property at the time of execution of the ESCA but that migrates into the Property and for which future response action is required in accordance with applicable law, statute or ordinance;
- 2) Chemical and biological warfare agents;
- 3) Radiological Materials;
- 4) Military Munitions;
- 5) Groundwater and existing contamination, pollution, or other environmental conditions greater than 15 feet below ground surface; and
- 6) Uninsured Unknown Conditions.

"RWQCB" shall mean the Central Valley Regional Water Quality Control Board and any successor agencies of the State.

“RWQCB Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the RWQCB incurs in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, or overseeing this Order including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, costs of participating in community relations meetings, legal or enforcement costs, including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation, costs for emergency response, or the costs incurred by RWQCB in enforcing the terms of the Order, including all costs incurred in connection with Dispute Resolution pursuant to Sections XXII and XXIII in the Order.

“Section” shall mean a portion of this Order identified by a Roman numeral.

“Site” shall mean the McClellan AFB Superfund Site, encompassing approximately 3,000 acres, located in Sacramento County, California.

“State” shall mean the State of California.

“State Interest” shall mean the interest rate applied to outstanding payments for costs billed pursuant to California Health and Safety Code section 25360.1. The rate of interest is subject to change.

“Statement of Work” or “SOW” shall mean the statement of work for implementation of removals, remedial investigation and feasibility studies and Remedial Design(s) and Remedial Action(s) for the Property, as set forth in Appendix C to this Order and any modifications made in accordance with this Order.

“Supervising Contractor” shall mean the principal contractor retained by the Respondent to supervise and direct the implementation of the Work under this Order.

“Uninsured Unknown Conditions” shall mean all Unknown Conditions which are not Insured Unknown Conditions.

“United States” shall mean the United States of America.

“Unknown Conditions” shall mean those environmental conditions at the Property that are not Known Conditions or Retained Conditions included in subsections 1) – 5) of the definition of Retained Conditions.

“Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); (4) any “hazardous waste” under California Health and Safety Code section 25117, or “hazardous substance” under California Health and Safety Code section 25316; and (5) any “waste” under California Water Code section 13050.

“Work” shall mean all activities Respondent is required to perform under this Order, except those required by Section XXXIV (Retention of Records).

V. FINDINGS OF FACT

14. a. The former McClellan Air Force Base, located in Sacramento County, California, was placed on the National Priorities list by the U.S. Environmental Protection Agency on July 22, 1987.

b. Since 1939, portions of the former McClellan Air Force Base have been used for a variety of activities associated with maintenance and operation of aircraft and related communications systems; such activities have involved the use of a variety of hazardous substances.

c. Hazardous substances that have been released or that have the potential to be released within the Property include, but may not be limited to polychlorinated biphenyls, dioxins, furans, and metals, which currently pose a threat to human health or the environment.

d. On May 2, 1990, the EPA, State of California Department of Health Services ("DHS") (now DTSC), and the Air Force entered into a Federal Facilities Agreement requiring the Air Force to identify, perform and complete all necessary response actions, including operation and maintenance at the former McClellan Air Force Base under CERCLA.

e. The former McClellan Air Force Base was selected in 1995 for Base Realignment and Closure and was officially closed in July, 2001.

f. McClellan Business Park, LLC, Respondent, is a Delaware limited liability company.

g. Sacramento County has requested an early transfer of the Property, which it has or will acquire upon EPA's approval of and the State's concurrence on the Covenant Deferral Request. To facilitate reuse of the Property by Respondent consistent with the Reuse Plan, adopted November 2002, the Air Force and Sacramento County have entered into an ESCA, pursuant to which the Air Force will provide funds to Sacramento County. Sacramento County has contracted with Respondent to complete the response actions funded by the ESCA (except for Retained Conditions), as determined by EPA pursuant to CERCLA and the NCP.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

15. Based on the Findings of Fact set forth above, and the Administrative Record supporting this Order, EPA has determined that:

a. The former McClellan Air Force Base is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Property, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and Waste Materials as defined in Section IV of this Order.

c. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. The conditions described in Paragraph 14 above constitute an actual or threatened release of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), or a release of Waste Material, as defined in Section IV of this Order.

e. The response actions required by this Order are necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Order, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VII. ADMINISTRATIVE ORDER

16. Based upon the foregoing Findings of Fact and Conclusions of Law and Determinations, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Order, including, but not limited to, all appendices to this Order and all documents incorporated by reference into this Order.

VIII. GENERAL PROVISIONS

17. Commitments by Respondent.

Respondent shall finance and perform the Work in accordance with this Order, the SOW, any subsequent ROD(s), and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Respondent and approved by EPA, in consultation with DTSC and RWQCB, pursuant to this Order. Respondent shall also reimburse EPA, DTSC and RWQCB for their respective Future Response Costs as provided in this Order.

18. Compliance with Applicable Law.

All activities undertaken by the Respondent pursuant to this Order shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Respondent must also comply with all applicable or relevant and appropriate requirements of federal and state environmental laws as set forth in the ROD(s) and the SOW. The activities conducted pursuant to this Order, if approved by EPA, shall be considered to be consistent with the NCP.

19. Permits

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work) and where such remedial action is selected and carried out in compliance with Section 121 of CERCLA. Where any portion of the Work that is not on Site requires a federal or state permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain all such permits and approvals.

b. The Respondent may seek relief under the provisions of Section XXI (Force Majeure) of this Order for any delay in the performance of the Work resulting from a failure to obtain, or delay in obtaining, any permit required for the Work.

c. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

20. Conveyance of Property.

a. At least 30 days prior to the conveyance of any interest in property located within the Property including, but not limited to, fee interests, leasehold interests, and mortgage interests, Respondent shall give written notice to EPA, DTSC, and RWQCB of the proposed conveyance, including the name and address of the grantee.

b. In the event of any such conveyance, Respondent's obligations under this Order, including, but not limited to, its obligation to abide by institutional controls, pursuant to Section IX (Access and Institutional Controls) of this Order, shall continue to be met by Respondent. In no event shall the conveyance release or otherwise affect the liability of Respondent to comply with all provisions of this Order, absent the prior written consent of EPA, DTSC, and RWQCB. If EPA, DTSC, and RWQCB approve, the grantee may perform some or all of the Work under this Order. EPA's, DTSC's, and RWQCB's decisions under Paragraph 20.b. are in their sole discretion and shall not be subject to dispute resolution or judicial review. EPA will consider the following criteria, among others, in approving or disapproving a proposed successor for the Work under this Order: (i) the technical qualifications of the successor, or its proposed consultant, to perform remaining Work obligations; (ii) financial ability to perform such obligations; (iii) the successor's legal status and legal authority to sign the Order; (iv) the proposed successor's willingness to sign the Order without modification; and (v) assurance that the proposed transfer of Work obligations will not hinder or delay completion of the Work. If EPA, DTSC, and RWQCB approve a successor for the Work under this Order, EPA, DTSC, and RWQCB may also provide covenants not to sue for the successor similar to those provided in Paragraphs 95 and 98 of this Order.

c. If Respondent conveys any fee interest in the Property or a portion

thereof prior to executing and recording a land use covenant that implements the land/water use restrictions, if any, selected in the ROD(s), and the successor does not assume the Work obligations with EPA's approval under Paragraph 20.b., Respondent shall ensure, through an enforceable agreement between Respondent and the grantee, that the grantee agrees to execute and record such land use covenant when directed to do so by EPA, DTSC, and RWQCB. If the grantee fails to execute and record such covenant, Respondent shall use best efforts, including but not limited to enforcement of its enforceable agreement with grantee, to ensure that the grantee executes and records such covenant. "Best efforts," in the context of this Paragraph 20, shall include but not be limited to the payment of reasonable sums of money in consideration of the execution and recordation of such covenant.

IX. PERFORMANCE OF THE WORK BY RESPONDENT

21. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by the Respondent pursuant to Sections IX (Performance of the Work by Respondent), X (Remedy Review), XI (Quality Assurance, Sampling and Data Analysis), and XVIII (Emergency Response) of this Order shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA, after consultation with DTSC and RWQCB. Respondent has proposed to use TetraTech as its Supervising Contractor and provided EPA, DTSC and RWQCB with the information meeting the criteria described in subparagraph b. below, including its qualifications and Quality Management Plans. _____ is not disapproved.

b. If at any time in the future, Respondent proposes to change its Supervising Contractor, Respondent shall notify EPA, DTSC and RWQCB in writing at least sixty (60) days in advance of such change, and must obtain an authorization to proceed from EPA, after consultation with DTSC and RWQCB, before the new Supervising Contractor performs, directs, or supervises any Work under this Order. Respondent must provide the name, title, and qualifications of any contractor proposed to be Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor, Respondent shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/241/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA, after consultation with DTSC and RWQCB, will issue a notice of disapproval or an authorization to proceed.

c. If EPA disapproves a proposed Supervising Contractor, EPA will notify Respondent in writing. Respondent shall submit to EPA, DTSC and RWQCB a list of

contractors, including the qualifications of each contractor that would be acceptable to them, within 30 days of receipt of EPA's disapproval of the contractor previously proposed. After consultation with DTSC and RWQCB, EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Respondent may select any contractor from that list that is not disapproved and shall notify EPA, DTSC and RWQCB of the name of the contractor selected within 21 days of EPA's authorization to proceed.

d. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Respondent from meeting one or more deadlines in a plan approved by the EPA pursuant to this Order, Respondent may seek relief under the provisions of Section XXI (Force Majeure).

22. Time-Critical Removal Actions. With respect to each time-critical removal action, the following procedures and requirements shall apply.

a. As directed by EPA after consultation with DTSC and RWQCB, Respondent shall perform such removal preliminary assessments/site investigations at one or more areas of the Property as are necessary to collect sufficient information to enable EPA to determine, after consultation with DTSC and RWQCB, whether any Time-Critical Removal Action should be performed at any area of the Property. Unless otherwise directed by EPA, Respondent shall perform, at a minimum, all actions necessary to implement any action memoranda for Time-Critical Removal Actions issued by EPA.

b. Activities and Deliverables. Within thirty (30) days after EPA's issuance of any action memorandum for a Time-Critical Removal Action, Respondent shall submit to EPA for approval, with copies to DTSC and RWQCB, a Time-Critical Removal Work Plan for performing the Removal Action described in any such action memorandum. The Time-Critical Removal Work Plan shall provide a description of, and an expeditious schedule for, the actions required by such action memorandum. Except as otherwise indicated by EPA, Respondent shall prepare any adjustments to the Quality Assurance Project Plan ("QAPP") and FSP as part of a Time-Critical Removal Work Plan. If EPA determines that it is appropriate, the plan shall also include contingency planning. Once approved, the Time-Critical Removal Work Plan, the schedule, and any subsequent modifications shall be incorporated into and shall be a requirement of this Order, and Respondent shall conduct the activities required by the approved Time-Critical Removal Work Plan. Respondent shall not commence implementation of the Time-Critical Removal Work Plan developed hereunder until receipt of written EPA approval, in consultation with DTSC and RWQCB, pursuant to Section XIV.

23. Non-Time-Critical Removal Actions - Engineering Evaluation / Cost Analyses. With respect to each non-time-critical removal action, the following procedures and requirements shall apply.

a. In the event that EPA, after consultation with DTSC and RWQCB, issues any engineering evaluation/cost analyses approval memoranda, relating to any area of the Property, Respondent shall perform an Engineering Evaluation/Cost Analysis (“EE/CA”) as set forth in the relevant EE/CA approval memorandum in accordance with CERCLA, the NCP, the SOW and relevant guidance. Unless otherwise directed by EPA, within forty-five (45) days after EPA issuance of an EE/CA approval memorandum, Respondent shall submit to EPA, DTSC and RWQCB an EE/CA Work Plan for the implementation of any such EE/CA, including but not limited to: collection of all data necessary to characterize the area subject to the Non-Time-Critical Removal Action (“NTCRA”); an evaluation of risks at the operable unit; identification and analysis of removal action alternatives; and development of sufficient information to enable EPA to select appropriate NTCRAs for such area(s) of the Property, after consultation with DTSC and RWQCB.

b. Activities and Deliverables. Respondent shall conduct activities and submit EE/CA deliverables as provided by Task 10 of the SOW, for the development of any EE/CA. All such activities shall be conducted in accordance with CERCLA, the NCP, and relevant guidance, including but not limited to the “Guidance on Conducting Non-Time-Critical Removal Actions under CERCLA” (OSWER Directive # 9360.0-32) and any guidance referenced in the SOW, as may be amended or modified by EPA. All EE/CA activities performed under this Order shall be in accordance with the schedules established in the SOW, and in full accordance with the standards, specifications, and other requirements of the EE/CA Work Plan and Sampling and Analysis Plan, as initially approved or modified by EPA after consultation with DTSC and RWQCB, and as may be amended or modified by EPA from time to time, after consultation with DTSC and RWQCB. Respondent shall submit to EPA, DTSC and RWQCB copies of all EE/CA plans, reports, submittals and other deliverables required under this Order, the SOW, and the EE/CA Work Plan. Upon approval by EPA, all such deliverables shall be incorporated into and shall be requirements of this Order.

24. Non-Time-Critical Removal Actions - Design.

a. In the event that EPA issues any action memoranda for NTCRAs relating to any area of the Property, Respondent shall perform the NTCRA design in accordance with CERCLA, the NCP, the SOW, and relevant guidance. Within sixty (60) days after EPA’s issuance of such an action memorandum, Respondent shall submit to EPA, DTSC and RWQCB a work plan for the design of such NTCRA (“NTCRA Design Work Plan”). The NTCRA Design Work Plan shall provide for design of the NTCRA set forth in the action memorandum, and for the achievement of the performance standards and other requirements set forth in such action memorandum, this Order, and the SOW. Upon approval by EPA, after consultation with DTSC and RWQCB, the NTCRA Design Work Plan shall be incorporated into and shall be a requirement of this Order. Respondent may prepare a Removal Action Work Plan in lieu of the components of the NTCRA Design and NTCRA Design Work Plan if EPA so approves, after consultation with DTSC and RWQCB, taking into account the complexity of the Property conditions

and the Removal Action. In such cases, the Removal Action Work Plan must meet the substantive requirements of the NTCRA Design Work Plan and the NTCRA Design.

b. Activities and Deliverables. Unless EPA determines otherwise, the NTCRA Design Work Plan shall include plans and schedules for implementation of all NTCRA design and pre-design tasks identified in the SOW, including but not limited to plans and schedules for the completion of (A) a design sampling and analysis plan (including but not limited to a NTCRA Design QAPP) in accordance with Section XI (Quality Assurance, Sampling and Data Analysis)); (B) a Health and Safety Plan for field design activities; and (C) a Construction Quality Assurance Plan. The NTCRA Design Work Plan may also include (D) a treatability study; (E) a Pre-design Work Plan; (F) a preliminary design submittal; (G) an intermediate design submittal; and (H) a pre-final/final design submittal. In addition, the NTCRA Design Work Plan shall include a schedule for completion of the NTCRA Design Work Plan. Upon approval of the NTCRA Design Work Plan by EPA, after consultation with DTSC and RWQCB, and acceptance of the Health and Safety Plan for all field activities, Respondent shall implement the NTCRA Design Work Plan. Respondent shall submit to EPA, DTSC and RWQCB all schedules, plans, submittals and other deliverables required under the approved NTCRA Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XIV (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Respondent shall not commence further NTCRA Design activities at the area subject to the NTCRA prior to approval of the NTCRA Design Work Plan.

25. Non-Time Critical Removal Actions.

a. In the event that EPA approves any NTCRA Design Work Plan submitted by Respondent for any area of the Property, Respondent shall perform the NTCRA for such area in accordance with CERCLA, the NCP, the SOW, and relevant guidance. Within thirty (30) days after EPA's approval of Respondent's NTCRA Design, Respondent shall submit to EPA, DTSC and RWQCB a work plan for implementing such NTCRA ("NTCRA Work Plan"). The NTCRA Work Plan shall provide for implementation of the NTCRA set forth in the action memorandum and the approved NTCRA Design, and for the achievement of the performance standards and other requirements set forth in such action memorandum, approved NTCRA Design Work Plan, this Order, and the SOW. Within sixty (60) days after EPA approval of Respondent's NTCRA Work Plan for such area, Respondent shall commence performance of all activities detailed in the NTCRA Work Plan, as approved by EPA after consultation with DTSC and RWQCB. Upon approval by EPA, the NTCRA Work Plan shall be incorporated into and shall be a requirement of this Order.

b. Activities and Deliverables. Respondent shall conduct all activities in accordance with the schedule required by the NTCRA Work Plan and the SOW, including but not limited to (A) construction in accordance with specifications; (B) performance of operation and maintenance, if applicable; (C) performance of construction quality assurance project plans; (D) performance of sampling plans directed

at measuring progress toward meeting performance standards; and (E) performance of contingency plans.

26. Remedial Investigations and Feasibility Studies. With respect to each remedial investigation and/or feasibility study, the following procedures and requirements shall apply.

a. Respondent shall perform one or more RIs and FSs to address all hazardous substances, pollutants, or contaminants (other than Retained Conditions) at the Property as directed by EPA, after consultation with DTSC and RWQCB, in accordance with CERCLA, the NCP, the SOW, and relevant guidance. For any portions of any investigations which the Air Force has performed and EPA, after consultation with DTSC and RWQCB, has approved, Respondent shall complete the remaining steps in the sequence and phasing of RI/FS activities as described in the SOW. As directed by EPA, Respondent shall submit to EPA, DTSC and RWQCB an RI/FS Work Plan for the implementation of each RI/FS, including but not limited to plans and schedules for the following activities: (A) collection of all data necessary to fully characterize conditions under investigation; (B) ecological and human health risk assessment; (C) development and screening of a range of final remedial alternatives; (D) detailed analysis of alternatives; and (E) development of sufficient information to enable EPA to select appropriate remedies for each operable unit.

b. Activities and Deliverables. Respondent shall conduct activities and submit RI/FS deliverables as provided by the SOW for the development of any RI/FS. All such work shall be conducted in accordance with CERCLA, the NCP, and relevant guidance, including but not limited to the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3 01), "Guidance for Data Usability in Risk Assessment" (OSWER Directive #9285.7-05), and guidance referenced therein, and guidance referenced in the SOW, as may be amended or modified by EPA. All RI/FS activities performed under this Order shall be in accordance with the schedules established in the SOW, and in full accordance with the standards, specifications, and other requirements of the RI/FS Work Plan and Sampling and Analysis Plan, as initially approved or modified by EPA, after consultation with DTSC and RWQCB, and as may be amended or modified by EPA from time to time, after consultation with DTSC and RWQCB. Respondent shall submit to EPA, DTSC and RWQCB copies of all RI/FS plans, schedules, reports, submittals and other deliverables required under this Order, the SOW and the RI/FS Work Plan. Upon approval by EPA, after consultation with DTSC and RWQCB, all such deliverables shall be incorporated into and shall be requirements of this Order.

27. Remedy Selection

Following approval of the RI/FS and after consultation with DTSC and RWQCB, EPA shall select a remedial action in accordance with CERCLA and the NCP, including preparation of a proposed plan, conduct of a public meeting, response to comments, and preparation and signature of a Record of Decision. Notwithstanding any other provision of this Order, the selection of a remedial action by EPA shall not be subject to dispute

resolution under this Order by the Respondent. Within 21 days of the signature of a Record of Decision, Respondent shall provide EPA, DTSC and RWQCB with a schedule for the remedial design ("RD") and performance of the Remedial Action ("RA"). If EPA, after consultation with DTSC and RWQCB, does not approve the schedule, Respondent shall be so advised and Respondent shall either revise the schedule or invoke the dispute resolution provisions of Section XXIII with respect to the schedule only, not the remedy selected.

28. Remedial Design. With respect to each remedial design, the following procedures and requirements shall apply.

a. Within 60 days after the issuance of the Record of Decision pursuant to Paragraph 27, Respondent shall submit to EPA, DTSC and RWQCB a work plan for the design of the Remedial Action at the Property ("Remedial Design Work Plan" or "RD Work Plan"). The Remedial Design Work Plan shall provide for design of the remedy set forth in the ROD and for achievement of the Performance Standards and other requirements set forth in the ROD, this Order and the SOW. Upon its approval by EPA, after consultation with DTSC and RWQCB, the Remedial Design Work Plan shall be incorporated into and become enforceable under this Order. Within 30 days after EPA's approval of the Remedial Design Work Plan, the Respondent shall submit to EPA, DTSC and RWQCB a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of: (1) design sampling and analysis plan (including, but not limited to, a Remedial Design Quality Assurance Project Plan ("RD QAPP") in accordance with Section XI (Quality Assurance, Sampling and Data Analysis)); (2) a Construction Quality Assurance Plan; (3) a treatability study; (4) a Pre-design Work Plan; (5) a preliminary design submittal; (6) an intermediate design submittal; and (7) a pre-final/final design submittal. In addition, the Remedial Design Work Plan shall include a schedule for completion of the Remedial Action Work Plan.

c. Upon approval of the Remedial Design Work Plan by EPA, after consultation with DTSC and RWQCB, and submittal of the Health and Safety Plan for all field activities to EPA, DTSC and RWQCB, Respondent shall implement the Remedial Design Work Plan. The Respondent shall submit to EPA, DTSC and RWQCB all plans, submittals and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XIV (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Respondent shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan.

d. The preliminary design submittal shall include, at a minimum, the following: (1) design criteria; (2) results of treatability studies; (3) results of additional field sampling and pre-design work; (4) project delivery strategy; (5) preliminary plans,

drawings and sketches; (6) required specifications in outline form; and (7) preliminary construction schedule.

e. The intermediate design submittal, if required by EPA or if independently submitted by the Respondent, shall be a continuation and expansion of the preliminary design. Any value engineering proposals must be identified and evaluated during this review.

f. The pre-final/final design submittal shall include, at a minimum, the following: (1) final plans and specifications; (2) Operation and Maintenance Plan; (3) Construction Quality Assurance Project Plan ("CQAPP"); (4) Field Sampling Plan (directed at measuring progress towards meeting Performance Standards); and (5) Contingency Plan. The CQAPP, which shall detail the approach to quality assurance during construction activities at the Site, shall specify a quality assurance official ("QA Official"), independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project.

g. Respondent may request EPA approval that the Remedial Design Work Plan and Remedial Action Work Plan be combined. Any combined Work Plan shall include all information described in Paragraphs 28 and 29 of this Section unless omissions are approved by EPA after consultation with DTSC and RWQCB.

29. Remedial Action. With respect to each remedial action, the following procedures and requirements shall apply.

a. Within 60 days after the approval of the final design submittal, Respondent shall submit to EPA, DTSC and RWQCB a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the ROD and achievement of the Performance Standards, in accordance with the ROD, this Order, the SOW, and the design plans and specifications developed in accordance with the Remedial Design Work Plan and approved by EPA after consultation with DTSC and RWQCB. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Order. At the same time as the Remedial Action Work Plan is submitted, Respondent shall submit to EPA, DTSC and RWQCB a Health and Safety Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements, including but not limited to, 29 C.F.R. § 1910.120.

b. The Remedial Action Work Plan shall include the following: (1) schedule for completion of the Remedial Action; (2) schedule for developing and submitting other required Remedial Action plans; (3) methods for satisfying permitting requirements (4) methodology for implementation of the Operation and Maintenance Plan; (5) methodology for implementation of the Contingency Plan; (6) tentative formulation of the Remedial Action team; (7) construction quality control plan (by constructor); and (8) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Remedial Action Work Plan also shall include the methodology for implementation of the Construction Quality Assurance Plan and a

schedule for implementation of all Remedial Action tasks identified in the final design submittal and shall identify the initial formulation of the Respondent's Remedial Action Project Team (including, but not limited to, the Supervising Contractor).

c. Upon approval of the Remedial Action Work Plan by EPA, after consultation with DTSC and RWQCB, Respondent shall implement the activities required under the Remedial Action Work Plan. The Respondent shall submit to EPA, DTSC and RWQCB all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XIV (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Respondent shall not commence physical Remedial Action activities at the Site prior to approval of the Remedial Action Work Plan.

30. The Respondent shall continue to implement the Remedial Action and Operation and Maintenance until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Order and the ROD.

31. Respondent acknowledges and agrees that nothing in this Order, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by EPA, DTSC or RWQCB that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards.

32. Waste Shipments.

a. Respondent shall comply with all applicable State waste management laws.

b. Respondent shall, prior to any shipment of Waste Material from the Property to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA, DTSC and RWQCB Project Coordinators of such shipment of Waste Material. However, this notification requirement shall not apply to any off-site shipments to out-of-state waste management facilities when the total volume of all such shipments will not exceed 10 cubic yards.

c. The Respondent shall include in the written notification for out-of-state waste shipments the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

d. The identity of the receiving facility and state will be determined by the Respondent following the award of the contract for Removal Action or Remedial Action construction. The Respondent shall provide the information required by Paragraph 32.c. as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

33. Off-Site Waste Shipments. Before shipping any hazardous substances, pollutants, or contaminants from the Property to an off-Site location, Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3) and 40 C.F.R. 300.440. If the off-Site location is in California, Respondent shall obtain certification from the State that the proposed receiving facility is in substantial compliance with California laws. Respondent shall only send hazardous substances, pollutants, or contaminants from the Property to an off-Site facility that complies with the requirements of the statutory provisions and regulations cited in the preceding sentences.

X. REMEDY REVIEW

34. Periodic Review.

For the duration of this Order, Respondent shall conduct any studies and investigations as requested by EPA, after consultation with DTSC and RWQCB, in order to permit EPA and/or the Air Force to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

35. EPA Selection of Further Response Actions.

If EPA determines, at any time, after consultation with DTSC and RWQCB, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Property in accordance with the requirements of CERCLA and the NCP.

a. Opportunity to Comment. For the duration of this Order, Respondent and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA and to submit written comments for the record during the comment period.

b. Respondent's Obligation to Perform Further Response Actions. If EPA selects further response actions for the Property, the Respondent shall undertake such further response actions that are not Retained Conditions, subject to Respondent's right to dispute resolution in accordance with Section XXIII. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved based on the administrative record supporting EPA's decision.

c. Submissions of Plans. If Respondent is required to perform further response actions pursuant to Paragraph 35.b., Respondent shall submit a plan for such work to EPA for approval, in accordance with the procedures set forth in Section IX (Performance of the Work by Respondent) and shall implement the plan approved by EPA, after consultation with DTSC and RWQCB, in accordance with the provisions of this Order.

XI. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

36. Respondent shall use quality assurance, quality control, and chain of custody procedures for all assessment, characterization, treatability, design, compliance and monitoring samples in accordance with "Uniform Federal Policy for Quality Assurance Project Plans (UFP-QAPP) (EPA/505/B-04-900A, March 2005), "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001) "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and subsequent amendments to such guidelines upon notification by EPA to Respondent of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Order, Respondent shall submit to EPA for approval, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and relevant guidance. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Order. Respondent shall ensure that EPA, DTSC and RWQCB personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent in implementing this Order. In addition, Respondent shall ensure that such laboratories shall analyze all samples submitted by EPA, DTSC or RWQCB pursuant to the QAPP for quality assurance monitoring. Respondent shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Order perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988 (collectively, "CLP-approved methods"), and any amendments made thereto during the course of the implementation of this Order; however, upon approval by EPA, after consultation with DTSC and RWQCB, the Respondent may use other analytical methods which are as stringent as or more stringent than the CLP-approved methods. Respondent shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Order participate in an EPA or EPA-equivalent QA/QC program. Respondent shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA after consultation with DTSC and RWQCB. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Order will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

37. Upon request, the Respondent shall allow split or duplicate samples to be taken by EPA, DTSC or RWQCB or their authorized representatives. Respondent shall notify EPA, DTSC and RWQCB not less than 28 days in advance of any sample

collection activity unless shorter notice is agreed to by EPA, after consultation with DTSC and RWQCB. In addition, EPA, DTSC and RWQCB shall have the right to take any additional samples that they deem necessary. Upon request, EPA shall allow the Respondent to take split or duplicate samples of any samples it takes as part of the EPA's oversight of the Respondent's implementation of the Work.

38. Respondent shall submit to EPA, DTSC and RWQCB two copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondent with respect to the Property and/or the implementation of this Order unless EPA agrees otherwise, after consultation with DTSC and RWQCB.

39. Notwithstanding any provision of this Order, the United States and the State, including DTSC and RWQCB, hereby retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

XII. ACCESS AND INSTITUTIONAL CONTROLS

40. As required in the covenant deferral process, certain restrictions on land/soil and groundwater use are needed to assure protection of human health and the environment at the time of transfer of the Property, and prior to and during the implementation of response actions at the Property. Accordingly, EPA, DTSC and RWQCB have prepared, in consultation with the Air Force, Sacramento County, and Respondent, a land use covenant ("LUC") that prohibits the uses described in subparagraph 40.a. on the Property. After EPA has selected one or more remedies for the Property in a ROD, Respondent, DTSC and RWQCB shall, if appropriate, modify or remove the restrictions in the land use covenant to be consistent with the land and water use restrictions, if any, selected in the ROD. Respondent shall refrain from using the Property and Site in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of remedial measures and response actions to be performed pursuant to this Order and/or in accordance with the ROD.

a. Respondent shall comply with the use restrictions selected in the ROD and shall comply with the following restrictions prior to implementation of the ROD:

1.) The Property shall not be put to any of the following uses:

(a) A residence, including any mobile home or factory built housing, used as residential human habitation.

(b) A hospital for humans.

(c) A public or private school for persons under 18 years of age.

(d) A day care center for children.

(e) Any use of the Property in a manner that causes the covering or disturbing of groundwater monitoring wells, or any use of the Property in a manner that restricts access to groundwater monitoring wells.

(f) Any use of the Property that includes construction of any well or use of an existing well to extract groundwater from the Property for purposes other than monitoring or treatment of groundwater, and any activities that would cause the surface application or injection of water or other fluids (e.g., construction or creation of any groundwater recharge area, unlined surface impoundments or injection well), unless specifically approved in writing by EPA, DTSC and RWQCB.

(g) Any use of the Property that would cause disturbance of or limit access to any equipment or systems associated with groundwater or soil vapor extraction remediation or monitoring.

(h) Any use that would restrict investigation activities, remedial actions, or long term maintenance and operations.

2.) Soil Management.

(a) No activities that will disturb the soil (e.g., digging, excavation, grading, removal, trenching, filling, earth movement or mining), including the asphaltic concrete cap, shall be allowed on the Property without prior written approval by EPA, after consultation with DTSC and RWQCB, of a soils management plan, except for response actions undertaken pursuant to this Order or the Amended FFA.

(b) Any soils brought to the surface by digging, grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of State and federal law.

41 As of the Effective Date of this Order, if the Property is owned or controlled by Respondent, Respondent shall: provide the United States, including EPA and the Air Force, and DTSC and RWQCB, and their representatives and contractors, with access at all reasonable times to the Property, for the purpose of conducting any activity related to this Order including, but not limited to, the following activities:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to EPA, DTSC and RWQCB;
- (3) Conducting investigations relating to contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for planning or implementing response actions or additional response actions at or near the Site;

- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;
- (7) Implementing any response actions or the Work in the event of Default by Respondent;
- (8) Inspecting and copying records, operating logs, contracts or other documents maintained or generated by Respondent or its agents, consistent with Section XXXIII (Access to Information);
- (9) Assessing Respondent's compliance with this Order; and
- (10) Determining whether the Property or Site is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted by, or pursuant to this Order.

42. Respondent shall, within 30 days of EPA's signature of the Record of Decision for the Property:

a. submit to EPA, DTSC, and the RWQCB, a draft of a modification (in a form approved by EPA, DTSC, and RWQCB) to the LUC that implements the land use and other restrictions required by the ROD, if EPA has determined that such modification is necessary; and

b. submit to EPA, DTSC, and RWQCB a current title insurance commitment or some other evidence of title acceptable to EPA, DTSC, and RWQCB which shows title to the Property to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA, DTSC, and RWQCB or have been subordinated to the LUC modification).

43. Within 15 days of EPA's, DTSC's, and RWQCB's approval and acceptance of the modification to the restrictions and the title evidence, Respondent shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the modified LUC with the Recorder's Office of Sacramento County. Within 30 days of recording the modified LUC, Respondent shall provide EPA, DTSC, and RWQCB with a final title insurance policy, or other final evidence of title acceptable to EPA, DTSC, and RWQCB, and a certified copy of the recorded LUC showing the clerk's recording stamps.

44. If EPA determines, after consultation with DTSC and RWQCB, that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Respondent shall cooperate with EPA's efforts to secure such governmental controls.

45. Notwithstanding any provision of this Order, the United States and the

State, including DTSC and RWQCB, retain all of their access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

XIII. REPORTING REQUIREMENTS

46. In addition to any other requirement of this Order, Respondent shall submit two copies of written monthly progress reports to EPA, DTSC and RWQCB that: (a) describe the actions which have been taken toward achieving compliance with this Order during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Respondent or their contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Order completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Respondent has proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Respondent shall submit these progress reports to EPA, DTSC and RWQCB by the tenth day of every month following the Effective Date of this Order until EPA notifies the Respondent pursuant to Section XVII (Certification of Completion). If requested by EPA, DTSC or RWQCB, Respondent shall also provide briefings for EPA, DTSC and RWQCB to discuss the progress of the Work.

47. The Respondent shall notify EPA, DTSC and RWQCB of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

48. Upon the occurrence of any event during performance of the Work that Respondent is required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act ("EPCRA"), Respondent shall within 24 hours of the onset of such event orally notify the EPA, DTSC and RWQCB Project Coordinators or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 9, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

49. Within 20 days of the onset of such an event, Respondent shall furnish to EPA, DTSC and RWQCB a written report, signed by the Respondent's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Respondent shall submit a report setting forth all actions taken in response thereto.

50. Respondent shall submit two copies of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Respondent shall simultaneously submit two copies of all such plans, reports and data to DTSC and RWQCB. Upon request by EPA, DTSC or RWQCB, Respondent shall submit in electronic form all portions of any report or other deliverable Respondent is required to submit pursuant to the provisions of this Order.

51. All reports and other documents submitted by Respondent to EPA, DTSC and RWQCB (other than the monthly progress reports referred to above) which purport to document Respondent's compliance with the terms of this Order shall be signed by an authorized representative of the Respondent.

XIV. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

52. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Order, EPA, after consultation with DTSC and RWQCB, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Respondent modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Respondent at least one notice of deficiency and an opportunity to cure within thirty (30) days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

53. In the event of approval, approval upon specified conditions, or modification by EPA, pursuant to Paragraph 52(a), (b), or (c), Respondent shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to Respondent's right to invoke the Dispute Resolution procedures set forth in Section XXIII (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 52(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XXIV (Stipulated Penalties).

54. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 52(d), Respondent shall, within thirty (30) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or

other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XXIV, shall accrue during the 30-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraph 52.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 52, Respondent shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for stipulated penalties under Section XXIV (Stipulated Penalties).

55. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, after consultation with DTSC and RWQCB, EPA may again require the Respondent to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Respondent shall implement any such plan, report, or item as modified or developed by EPA, subject only to its right to invoke the procedures set forth in Section XXIII (Dispute Resolution).

56. *If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Respondent shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Respondent invokes the dispute resolution procedures set forth in Section XXIII (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XXIII (Dispute Resolution) and Section XXIV (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XXIV.*

57. All plans, reports, and other items required to be submitted to EPA, DTSC and RWQCB under this Order shall, upon approval or modification by EPA, be enforceable under this Order. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Order, the approved or modified portion shall be enforceable under this Order.

XV. PROJECT COORDINATORS

58. Within 20 days of the Effective Date of this Order, Respondent, DTSC, RWQCB and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Respondent's Project Coordinator shall be subject to disapproval by EPA, in consultation with DTSC and RWQCB, and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The

Respondent's Project Coordinator shall not be an attorney for the Respondent in this matter. He or she may assign other representatives, including other contractors, to serve as a representative for oversight of performance of daily operations during remedial activities.

59. EPA, DTSC and RWQCB may designate other representatives, including, but not limited to EPA, DTSC and RWQCB employees, and federal and state contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Order. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Order and to take any necessary response action when s/he determines that conditions at the Property constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material. EPA's Project Coordinator, DTSC's Project Coordinator, RWQCB's Project Coordinator and the Respondent's Project Coordinator will meet, at a minimum, on a monthly basis.

XVI. ASSURANCE OF ABILITY TO COMPLETE WORK

60. Respondent represents that it shall enter or has entered into a contractual agreement with Sacramento County, pursuant to which Sacramento County will pay to Respondent all funds which shall be received by Sacramento County from the Air Force under the ESCA, which are anticipated to amount to \$11,200,000, less funds for certain administrative costs to be retained by Sacramento County. Respondent shall use all such funds received from Sacramento County to finance and perform the Work under this Order. Respondent also represents that upon execution of the ESCA, it has obtained or shall obtain the Environmental Insurance policies required by the ESCA. Such policies include a cleanup cost cap policy in the amount of \$ 5,000,000 and a pollution legal liability policy in the amount of \$10,000,000.

XVII. CERTIFICATION OF COMPLETION

61. Completion of the Remedial Action.

a. Within 90 days after Respondent concludes that the Remedial Action has been fully performed, including recordation of a modification to the LUC, if required by EPA, and implementation of any other institutional controls called for in the ROD, and the Performance Standards have been attained, Respondent shall schedule and conduct a pre-certification inspection to be attended by Respondent, EPA, DTSC and RWQCB. If, after the pre-certification inspection, the Respondent still believes that the Remedial Action has been fully performed and the Performance Standards have been attained,

Respondent shall submit to EPA for approval a written report requesting certification, with a copy to the DTSC and RWQCB, pursuant to Section XIV (EPA Approval of Plans and Other Submissions) within 30 days of the inspection. In the report, a professional engineer registered in the State and Respondent's Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Order. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of Respondent or the Respondent's Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

b. If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after consultation with DTSC and RWQCB, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Order or that the Performance Standards have not been achieved, EPA will notify Respondent in writing of the activities that must be undertaken by Respondent pursuant to this Order to complete the Remedial Action and achieve the Performance Standards, provided, however, that EPA may only require Respondent to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the scope of the remedy selected in the ROD. EPA will set forth in the notice a schedule for performance of such activities consistent with the Order and the SOW or require the Respondent to submit a schedule to EPA, DTSC and RWQCB for approval pursuant to Section XIV (EPA Approval of Plans and Other Submissions). Respondent shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to Respondent's right to invoke the dispute resolution procedures set forth in Section XXIII (Dispute Resolution). EPA will also send a copy of such notice to Sacramento County.

62. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion, and after consultation with DTSC and RWQCB, that the Remedial Action has been performed in accordance with this Order and that the Performance Standards have been achieved, EPA will so certify in writing to Respondent. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Order. Certification of Completion of the Remedial Action shall not affect Respondent's obligations under this Order.

63. Completion of the Work.

a. Within 90 days after Respondent concludes that all phases of the Work (including O & M), have been fully performed, Respondent shall schedule and conduct a pre-certification inspection to be attended by Respondent, EPA, DTSC and RWQCB. If, after the pre-certification inspection, the Respondent still believes that the Work has been fully performed, Respondent shall submit a written report by a professional engineer registered in the State stating that the Work has been completed in full satisfaction of the requirements of this Order. The report shall contain the following

statement, signed by a responsible corporate official of a Respondent or the Respondent's Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

b. If, after review of the written report, EPA, after consultation with DTSC and RWQCB, determines that any portion of the Work has not been completed in accordance with this Order, EPA will notify Respondent in writing of the activities that must be undertaken by Respondent pursuant to this Order to complete the Work, provided, however, that EPA may only require Respondent to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the scope of the remedy selected in the ROD. EPA will set forth in the notice a schedule for performance of such activities consistent with the Order and the SOW or require the Respondent to submit a schedule to EPA for approval pursuant to Section XIV (EPA Approval of Plans and Other Submissions). Respondent shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to Respondent's right to invoke the dispute resolution procedures set forth in Section XXIII (Dispute Resolution).

c. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Respondent, and after consultation with DTSC and RWQCB, that the Work has been performed in accordance with this Order, EPA will so notify the Respondent in writing.

XVIII. EMERGENCY RESPONSE

64. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall, subject to Paragraph 65, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify EPA's, DTSC's and RWQCB's Project Coordinators. If EPA's Project Coordinator is unavailable, EPA's Alternate Project Coordinator must be notified. If neither of these EPA persons is available, the Respondent shall notify the EPA Emergency Response Unit, Region 9. Respondent shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Respondent fails to take appropriate response action as required by this Section and EPA takes such action instead, Respondent shall reimburse EPA for all costs of the response action not inconsistent with the NCP, pursuant to Section XIX (Payments for Response Costs).

65. Nothing in the preceding Paragraph or in this Order shall be deemed to limit any authority of the United States or the State, including DTSC and RWQCB, to a) take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Property, or b) direct or order such action, or seek an order from a Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Property.

XIX. PAYMENTS FOR RESPONSE COSTS

66. The total amount to be paid by Respondent pursuant to Paragraph 67 shall be deposited in the McClellan AFB Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

67. Payments for EPA Future Response Costs.

a. Respondent shall pay to EPA all Future Response Costs not inconsistent with the National Contingency Plan. On a periodic basis EPA will send Respondent a bill requiring payment that includes a standard Regionally-prepared cost summary, which includes direct and indirect costs incurred by EPA and its contractors. Respondent shall make all payments within 30 days of Respondent's receipt of each bill requiring payment, except as otherwise provided in Paragraph 68. Respondent shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, and EPA Site/Spill ID Number #Q6. Respondent shall send the check(s) to:

U.S. Environmental Protection Agency
Attn: Region 9 Receivables
P.O. Box 371099M
Pittsburgh, PA 15251

b. At the time of payment, Respondent shall send notice that payment has been made to EPA and to the Regional Financial Management Officer, in accordance with Section XXXV (Notices and Submissions).

68. Respondent may contest payment of any Future Response Costs under Paragraph 67 if Respondent determines that EPA has made an accounting error or if Respondent alleges that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to EPA pursuant to Section XXXV (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Respondent shall within the 30-day period pay all uncontested Future Response Costs to EPA in the manner described in

Paragraph 67. Simultaneously, the Respondent shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Respondent shall send to EPA, as provided in Section XXXV (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Respondent shall initiate the Dispute Resolution procedures in Section XXIII (Dispute Resolution). If EPA prevails in the dispute, within 5 days of the resolution of the dispute, the Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 67. If the Respondent prevails concerning any aspect of the contested costs, the Respondent shall pay that portion of the costs (plus associated accrued interest) for which Respondent did not prevail to the United States in the manner described in Paragraph 67; Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XXIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Respondent's obligation to reimburse EPA for its Future Response Costs.

69. In the event that the payments required by Paragraph 67 are not made within 30 days of the Respondent's receipt of the bill, Respondent shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the Respondent's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to EPA by virtue of Respondent's failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 86. The Respondent shall make all payments required by this Paragraph in the manner described in Paragraph 67.

70. Payment of DTSC Future Response Costs.

a. As of the Effective Date of this Order, Respondent shall pay all of DTSC's Future Response Costs related to the Work performed under this Order. DTSC will bill Respondent quarterly for its response costs. Respondent shall pay DTSC within sixty (60) days of date of invoice. Any billing not paid within sixty (60) days is subject to State Interest calculated from the date of the invoice pursuant to California Health and Safety Code section 25360.1. All payments made by Respondent pursuant to this Order shall be by cashier's or certified check made payable to "DTSC," and shall bear on the face the project code of the Site (Site ____) and the Docket number of this Order. Payments shall be sent to:

Department of Toxic Substances Control
Accounting/Cashier
1001 I Street, 21st Floor
P.O. Box 806
Sacramento, California 95812-0806

A photocopy of all payment checks shall also be sent to the person designated by DTSC to receive submittals under this Order.

b. If Respondent disputes a DTSC billing, or any part thereof, Respondent shall notify DTSC's assigned project manager and attempt to informally resolve the dispute with DTSC's project manager and branch chief. If Respondent desires to formally request dispute resolution with regard to the billing, Respondent shall file a request for dispute resolution in writing within 45 days of the date of the billing in dispute. The written request shall describe all issues in dispute and shall set forth the reasons for the dispute, both factual and legal. If the dispute pertains only to a portion of the costs included in the invoice, Respondent shall pay all costs which are undisputed in accordance with Subparagraph 70.a. The filing of a notice of dispute pursuant to this Paragraph shall not stay the accrual of DTSC interest on any unpaid costs pending resolution of the dispute. The written request shall be sent to:

Special Assistant for Cost Recovery and Reimbursement Policy
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

A copy of the written request for dispute resolution shall also be sent to the person designated by DTSC to receive submittals under this Order. A decision on the billing dispute will be rendered by the Special Assistant for Cost Recovery and Reimbursement Policy or other DTSC designee.

71. Payment of RWQCB Future Response Costs

a. As of the Effective Date of this Order, the Respondent is liable for all of the RWQCB's costs related to the Work performed under this Order in responding to the hazardous materials at the Site. Cost recovery may be pursued by the RWQCB under CERCLA, California Health and Safety Code Sections 25187.2 and 25360, California Water Code Sections 13304 and 13365, or any other applicable state or federal statute or common law. The RWQCB will bill the Respondent quarterly for oversight activities performed by the RWQCB hereunder. The Respondent shall pay the RWQCB within sixty (60) days of receipt of the RWQCB's billing. Any billing not paid within sixty (60) days is subject to State Interest calculated from the date of the billing pursuant to California Health and Safety Code section 25360.1. All payments made by the Respondent pursuant to this Order shall be by cashier's check or certified check made payable to the RWQCB and shall bear on the face the project code of the Site. Payments to the RWQCB shall be sent to:

State Water Resources Control Board
SLIC Program
P.O. Box 944212
Sacramento, CA 94244-2120

A photocopy of all payment checks shall also be sent to the person designated by the RWQCB to receive submittals under this Order.

b. If Respondent disputes a RWQCB billing, or any part thereof, Respondent shall notify the RWQCB's assigned project manager and attempt to informally resolve the dispute with the RWQCB's project manager and immediate supervisor. If Respondent desires to formally request dispute resolution with regard to the billing, Respondent shall file a request for dispute resolution in writing within 45 days of the date of the billing in dispute. The written request shall describe all issues in dispute and shall set forth the reasons for the dispute, both factual and legal. If the dispute pertains only to a portion of the costs included in the invoice, Respondent shall pay all costs which are undisputed in accordance with Subparagraph 71.a. The filing of a notice of dispute pursuant to this Paragraph shall not stay the accrual of RWQCB interest on any unpaid costs pending resolution of the dispute. The written request shall be sent to:

Mr. Ken Landau, Assistant Executive Officer
California Regional Water Quality Control Board, Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114

A copy of the written request for dispute resolution shall also be sent to the person designated by the RWQCB to receive submittals under this Order. A decision on the billing dispute will be rendered by Mr. Landau, or his designee.

XX. INDEMNIFICATION AND INSURANCE

72. Respondent's Indemnification of the United States and State.

a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Respondent as EPA's authorized representative under Section 104(e) of CERCLA, if applicable. Respondent shall indemnify, save and hold harmless the United States and the State and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Order, including, but not limited to, any claims arising from any designation of Respondent as EPA's authorized representative under Section 104(e) of CERCLA, if applicable. Further, the Respondent agrees to pay the United States and the State all costs they incur including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the State based on negligent or other wrongful acts or omissions of Respondent, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order. Neither the United States nor the State shall be held out as a party to any contract

entered into by or on behalf of Respondent in carrying out activities pursuant to this Order. Neither the Respondent nor any such contractor shall be considered an agent of the United States or the State.

b. The United States and the State shall give Respondent notice of any claim for which the United States or the State plans to seek indemnification pursuant to Paragraph 72.a. and shall consult with Respondent prior to settling such claim.

73. Respondent waives all claims against the United States and the State, including DTSC and RWQCB, for damages or reimbursement or for set-off of any payments made or to be made to the United States or DTSC and RWQCB arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Property, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States and the State, including DTSC and RWQCB, with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Property, including, but not limited to, claims on account of construction delays.

74. No later than 15 days before commencing any on-site Work, Respondent shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Section XVII (Certification of Completion), comprehensive general liability insurance with limits of five (5) million dollars, combined single limit, and automobile liability insurance with limits of one (1) million dollars, combined single limit, naming the United States, DTSC, and RWQCB as additional insureds. In addition, for the duration of this Order, Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Order. Prior to commencement of the Work under this Order, Respondent shall provide to EPA, DTSC and RWQCB certificates of such insurance and a copy of each insurance policy. Respondent shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Respondent demonstrates by evidence satisfactory to EPA, DTSC and RWQCB that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Respondent need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XXI. FORCE MAJEURE

75. "Force majeure," for purposes of this Order, is defined as any event arising from causes beyond the control of the Respondent, of any entity controlled by Respondent, or of Respondent's contractors, that delays or prevents the performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. A court-ordered injunction or stop work order related to any Work required by this Order

may be considered a force majeure event. The requirement that the Respondent exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include a failure to attain the Performance Standards or financial inability to complete the Work, except to the extent that a failure by the Air Force to fund all or a portion of the ESCA delays or prevents performance of obligations under this Order that are funded by the ESCA. "Force Majeure" shall not include any delays caused by any disputes between the Air Force, Sacramento County, and/or Respondent or any successors in title to the Property.

76. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, the Respondent shall notify orally EPA's Project Coordinator, DTSC's Project Coordinator and RWQCB's Project Coordinator or, in his or her absence, their Alternate Project Coordinators or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 9, within 48 hours of when Respondent first knew that the event might cause a delay. Within 14 days thereafter, Respondent shall provide in writing to EPA, DTSC and RWQCB an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Respondent's rationale for attributing such delay to a force majeure event if Respondent intends to assert such a claim; and a statement as to whether, in the opinion of the Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Respondent shall include with any notice all available documentation supporting Respondent's claim that the delay was attributable to a force majeure event. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known.

77. If EPA, after consultation with DTSC and RWQCB, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Order that are affected by the force majeure event will be extended by EPA, after consultation with DTSC and RWQCB, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA, after consultation with DTSC and RWQCB, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Respondent in writing of its decision. If EPA, after consultation with DTSC and RWQCB, agrees that the delay is attributable to a force

majeure event, EPA will notify the Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

78. If the Respondent elects to invoke the dispute resolution procedures set forth in Section XXIII (Dispute Resolution), Respondent shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to *avoid and mitigate the effects of the delay*, and that Respondent complied with the requirements of Paragraphs 75 and 76, above. If Respondent carries this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation of this Order identified to EPA.

XXII. EPA, DTSC AND RWQCB DISPUTE PROCESS

79. If disagreements or disputes arise during the consultation process between EPA, DTSC and RWQCB under this Order, EPA, DTSC and RWQCB agree to use the process outlined in this Paragraph to resolve such disputes. EPA, DTSC and RWQCB shall, whenever possible, make decisions by consensus at the Project Coordinator level. In the event a consensus decision cannot be reached by the EPA, DTSC and RWQCB Project Coordinators concerning the approval of a document or deliverable required by this Order, a meeting or telephone conference shall be scheduled and held within five (5) days of DTSC and/or RWQCB raising the dispute among EPA, DTSC and RWQCB Project Coordinators and their immediate supervisors to reach a consensus decision. If consensus cannot be reached by the immediate supervisors, the dispute shall be immediately elevated to the EPA Region 9 Branch Chief of the Federal Facility and Site Cleanup Branch, the DTSC Chief of Northern California Operations, Office of Military Facilities, and the RWQCB Section Chief, Site Cleanup Section, who shall meet or confer by telephone within ten (10) days of the meeting or telephone conference discussed above in an attempt to resolve the dispute through consensus. If no consensus can be reached, the dispute shall be immediately elevated to the EPA Region 9 Director of the Superfund Division, the DTSC Deputy Director for Site Mitigation and Brownfields Reuse, and the RWQCB Executive Officer, who shall meet or confer by telephone within ten (10) days of the meeting or telephone conference discussed in the previous sentence in an attempt to resolve the dispute through consensus. If no consensus can be reached, the decision applicable to Respondent shall be the final decision made by the EPA Region 9 Director of the Superfund Division. By agreeing to this decision making process, DTSC and RWQCB do not waive any right or claim each agency may have for relief, and reserve any authority they may have under federal or state law to require Waste Material cleanups compliant with such law.

XXIII. DISPUTE RESOLUTION

80. Unless otherwise expressly provided for in this Order, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between Respondent and EPA, DTSC, or RWQCB arising under or with respect to this Order. However, the procedures set forth in this Section shall not apply to actions by EPA to enforce obligations of the Respondent that have not been disputed in accordance with this Section. Additionally, this Section shall not apply to disputes regarding DTSC's Future Response Costs or RWQCB's Future Response Costs; such disputes will be addressed in accordance with Paragraphs 70 and 71 above, respectively.

81. Any dispute which arises under or with respect to an EPA decision under this Order shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when Respondent sends the other Parties a written Notice of Dispute.

82. Statements of Position. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA, except on disputes regarding DTSC or RWQCB Future Response Costs reimbursement, shall be binding unless within 14 days after the conclusion of the informal negotiation period, Respondent invokes the formal dispute resolution procedures of this Section by serving on EPA, with copies concurrently provided to DTSC and RWQCB, a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any position and any supporting documentation relied upon by the Respondent.

83. Within 21 days after receipt of Respondent's Statement of Position, EPA will serve on all other parties its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. Within 7 days after receipt of EPA's Statement of Position, Respondent may submit a Reply. DTSC and RWQCB may also file a Statement of Position for EPA's consideration on the disputed matter no later than 7 days from receipt of EPA's Statement of Position.

84. Following receipt of all statements to be submitted pursuant to Paragraphs 82 and 83, the Director of the Superfund Division, EPA Region 9 will issue a final decision resolving the dispute. The Superfund Division Director's decision shall be binding on the Respondent.

85. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Respondent under this Order, not directly in dispute, unless EPA, after consultation with DTSC and RWQCB, agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 87. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Order.

In the event that the Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXIV (Stipulated Penalties).

XXIV. STIPULATED PENALTIES

86. Respondent shall be liable for stipulated penalties in the amounts set forth in Subparagraphs 86.a. and b. to EPA, DTSC, and RWQCB, with 50% of such penalties to be paid to EPA and 50% to DTSC and RWQCB, for failure to comply with the requirements of this Order specified below, unless excused under Section XXI (Force Majeure). Payment of stipulated penalties to DTSC and RWQCB shall be split evenly, unless otherwise directed in the demand letter set forth in Paragraph 89. "Compliance" by Respondent shall include completion of the activities under this Order or any work plan or other plan approved under this Order identified below in accordance with all applicable requirements of law, this Order, the SOW, and any plans or other documents approved by EPA pursuant to this Order and within the specified time schedules established by and approved under this Order.

a. Stipulated Penalty Amounts – Work, including Payment of Future Response Costs.

The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph (i):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,500	1st through 14th day
\$5,000	15th through 30th day
\$15,000	31st day and beyond

i. Compliance Milestones.

- 1) Conceptual Site Model
- 2) Summary of Existing Data Report
- 3) RI/FS Workplan
- 4) Sampling and Analysis Plan
- 5) Health and Safety Plan
- 6) Community Relations Plan
- 7) Remedial Investigation (or Remedial Investigation Addendum) Report
- 8) Technical Memo
- 9) Feasibility Study Report
- 10) Schedule for Remedial Action

- 11) Remedial Design Scoping Document
- 12) Remedial Design Workplan
- 13) Remedial Design Document
- 14) Remedial Action Workplan
- 15) Institutional Controls Implementation Plan
- 16) Operations and Maintenance Plan
- 17) Remedial Action Completion Report
- 18) Removal Action Design Document
- 19) Removal Action Design Workplan
- 20) Removal Action Workplan
- 21) Removal Action Completion Reports
- 22) Work Status Report
- 23) Late Payment of EPA, DTSC, or RWQCB Future Response Costs
- 24) Failure to comply with any use restrictions selected in the ROD
- 25) Failure to comply with the use restrictions listed in Paragraph 40.a prior to adoption of any new and/or different use restrictions, if any
- 26) Failure to execute and record a land use covenant that matches the land use restrictions selected in the ROD, pursuant to Paragraphs 40 and 43
- 27) Failure to provide access pursuant to Paragraph 41
- 28) Failure to submit a modification of the land use covenant and title evidence to EPA pursuant to Paragraph 42.

b. Stipulated Penalty Amounts - Reports.

The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents not listed in Subparagraph 86.a. (1) above, and any other violation of this Order:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$3,000	15th through 30th day
\$10,000	31st day and beyond

87. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the

final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XIV (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; (2) with respect to a decision by the Director of the Superfund Division, EPA Region 9, under Paragraph 84 of Section XXIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Respondent's reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

88. Following EPA's determination that Respondent has failed to comply with a requirement of this Order, EPA may give Respondent written notification of the same and describe the noncompliance. EPA may send the Respondent a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Respondent of a violation.

89. All penalties accruing under this Section shall be due and payable within 30 days of the Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the Dispute Resolution procedures under Section XXIII (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. Environmental Protection Agency, Attn: Region 9 Receivables, P.O. Box 37109M, Pittsburgh PA 15262-0001, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #0941. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA, DTSC, and RWQCB as provided in Section XXXV (Notices and Submissions). All payments to DTSC and RWQCB under this Section shall be due and payable within 30 days of the Respondent's receipt from DTSC and the RWQCB of a demand for payment of the penalties, unless Respondent invokes the Dispute Resolution procedures under Section XXIII (Dispute Resolution). All payments to DTSC under this section shall be paid by cashier's or certified check made payable to "DTSC," and shall bear on the face the Docket number of this Order. Payments shall be sent to:

Department of Toxic Substances Control
Accounting/Cashier
1001 I Street, 21st Floor
P.O. Box 806
Sacramento, California 95812-0806

All payments to RWQCB under this section shall be paid by certified or cashier's check(s) made payable to the State Water Resources Control Board Cleanup and Abatement Account, shall be mailed to California Regional Water Quality Control Board, Central Valley Region, 11020 Sun Center Drive, #200, Rancho Cordova, CA 95670, shall indicate that the payment is for stipulated penalties, and shall reference this Order for the former McClellan Air Force Base.

90. The payment of penalties shall not alter in any way Respondent's obligation to complete the performance of the Work required under this Order.

91. Penalties shall continue to accrue as provided in Paragraph 87 during any dispute resolution period, but need not be paid until the following: If the dispute is resolved by agreement, or by a decision of EPA, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or order;

92. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 88.

93. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Order or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, provided, however, that EPA shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Order.

94. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

XXV. COVENANT NOT TO SUE BY EPA

95. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Order, and except as otherwise specifically provided in this Order, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for Existing Contamination. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondent of all obligations under this Order, including, but not limited to, payment of Future Response Costs pursuant to Section XIX. This covenant not to sue is also conditioned upon the veracity of information provided to EPA by the Respondent in this Order, including the representations made pursuant to Paragraphs 4 and 60. This covenant not to sue extends only to Respondent and does not extend to any other person.

XXVI. RESERVATIONS OF RIGHTS BY EPA

96 Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal

or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

97. The covenant not to sue set forth in Section XXV above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Order is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondent to meet a requirement of this Order;
- b. liability based on Respondent's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in a ROD, this Order, or otherwise ordered by EPA, after signature of this Order by the Respondent;
- c. criminal liability;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Property;
- f. liability for violations of federal or state law which occur during or after implementation of Removal or Remedial Actions; and
- g. liability for additional response actions that EPA determines are necessary to achieve Performance Standards.

XXVII. DTSC AND RWQCB COVENANT NOT TO SUE

98. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Order, and except as otherwise specifically provided in this Order, DTSC and RWQCB covenant not to sue or to take administrative action against Respondent pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a), for Existing Contamination. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondent of all obligations under this Order, including, but not limited to, payment of Future Response Costs pursuant to Section XIX. This covenant not to sue is also conditioned upon the veracity of information provided to DTSC and RWQCB by the Respondent in this Order, including the representations made pursuant to Paragraphs 4 and 60. This covenant not to sue extends only to Respondent and does not extend to any other person.

XXVIII. DTSC AND RWQCB RESERVATIONS OF RIGHTS

99. The covenant not to sue by DTSC and RWQCB set forth in Section XXVII does not pertain to any matters other than those expressly identified therein. DTSC and RWQCB reserve, and this Order is without prejudice to, all rights against Respondent with respect to all other matters, including but not limited to:

(a) claims based on a failure by Respondent to meet a requirement of this Order;

(b) liability for costs incurred or to be incurred by the State that are not reimbursed by Respondent pursuant to this Order, except for Retained Conditions;

(c) liability for performance of response actions other than the Work approved under the Order performed by Respondent pursuant to this Order, except for Retained Conditions;

(d) criminal liability;

(e) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

(f) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Property; and

(g) liability for violations of local, state or federal law or regulations.

XXIX. COVENANTS BY RESPONDENT

100. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, or the State, or its contractors and employees, with respect to Existing Contamination, Future Response Costs, or this Order, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Work required by this Order; or

c. any claim arising out of the Work or arising out of the response actions for which the Future Response Costs have or will be incurred, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at

common law.

101. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 97 (b), (c), (d), and (f) - (g), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

102. Nothing in this Order shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d)

XXX. OTHER CLAIMS

103. By issuance of this Order, the United States, including EPA, and the State, including DTSC and RWQCB, assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent.

104. No action or decision by EPA pursuant to this Order, including remedy selection by EPA, shall give rise to any right to judicial review. Respondent waives any right it may have to bring an action under Section 310 of CERCLA, 42 U.S.C. § 9659, related to any response action conducted pursuant to this Order on the Property.

XXXI. CONTRIBUTION

105. Nothing in this Agreement precludes the United States, the State, or Respondent from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any person not a party to this Order, including any claim Respondent may have pursuant to Section 107(a)(4)(B). Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2),(3), to pursue any such persons to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

106. In the event of a suit or claim for contribution brought against Respondent, notwithstanding the provisions of Section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to Existing Contamination (including any claim based on the contention that Respondent is not a BFPP, or has lost its status as a BFPP), the Parties agree that this Order shall then constitute an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondent would be entitled, from the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Order. The "matters addressed" in this Order are all response actions taken or to be taken and all response costs incurred or to be incurred by the United States, DTSC, RWQCB or by any other person with respect to Existing Contamination.

107. In the event Respondent were found, in connection with any action or claim it may assert to recover costs incurred or to be incurred with respect to Existing Contamination, not to be a BFPP, or to have lost its status as a BFPP, the Parties agree that this Order shall then constitute an administrative settlement within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondent has resolved its liability for all response actions taken or to be taken and all response costs incurred or to be incurred by EPA, DTSC, RWQCB or by any other person with respect to Existing Contamination.

108. Respondent agrees that with respect to any suit or claim brought by it for matters related to this Order it will notify EPA, DTSC, and RWQCB in writing no later than 60 days prior to the initiation of such suit or claim.

109. Respondent also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Order it will notify in writing EPA, DTSC, and RWQCB within 10 days of service of the complaint on it.

XXXII. NONCOMPLIANCE, STOP WORK AND DEFAULT DETERMINATIONS

110. Respondent shall perform and complete all necessary response actions at the Property (except for Retained Conditions) in accordance with CERCLA, the NCP, ARARs not otherwise waived, and relevant guidance.

111. Notices of Noncompliance and Stop Work. Following EPA's determination, after consultation with DTSC and RWQCB, that Respondent has failed to comply with a requirement of this Order, EPA may give Respondent written notification of the same, with a copy to DTSC, and RWQCB and describe the noncompliance ("Notice of Noncompliance"). EPA may also give Respondent written notification that Respondent should stop work on all or any portion of its response action activities at the Property until EPA determines that Respondent has remedied such noncompliance ("Notice to Stop Work"). Upon receipt of a Notice to Stop Work, Respondent shall immediately stop work on all or any portion of its response action activities at the Property as specified in such notice, and shall remedy the noncompliance. Respondent shall resume such response action activities only upon receipt of written notification from EPA, after consultation with DTSC and RWQCB, that Respondent may proceed with such activities as specified in the notification.

112. Finding of Default. EPA, after consultation with DTSC and RWQCB, may determine that a Default has occurred in one or more of the following situations: (i) EPA has issued to Respondent two or more Notices of Noncompliance for significant noncompliance, with or without accompanying Notices to Stop Work, pursuant to Paragraph 111; (ii) EPA determines that Respondent is implementing the Work in a manner that may cause endangerment to human health or the environment; (iii) EPA determines that Respondent has effectively ceased to perform all or a portion of the Work

for any reason, including lack of Air Force funding through the ESCA, except for a Force Majeure event pursuant to Section XXI that results in only a temporary delay in performance; (iv) Respondent misappropriates or misuses funds received under the ESCA; or (v) Respondent is seriously deficient or late in its performance of the Work. Prior to issuance of a Finding of Default, EPA shall provide Respondent in writing (with copies to the Air Force, DTSC and RWQCB) with a Notice of Intent to Find Default and of the proposed basis for issuing a Finding of Default. Respondent may dispute the Notice of Intent to Find Default, in accordance with the process provided in Section XXIII (Dispute Resolution). In the event of an EPA determination that a Default has occurred, either without Respondent having invoked the Dispute Resolution process in Section XXIII, or following the conclusion of such Dispute Resolution process, EPA will send Respondent a written Finding of Default, with copies to the Air Force, DTSC, and RWQCB. The Finding of Default will provide the basis for EPA's determination and will specify whether Respondent may continue to perform the Work while the Air Force prepares to resume response action activities under the Amended FFA.

113. Within thirty (30) days of Respondent's receipt of the Finding of Default, or such other time period specified by EPA, Respondent shall cease performance of the Work.

114. In the event that the Air Force resumes performance of response action activities under the Amended FFA, Respondent shall fully cooperate in the orderly transfer of responsibilities for performance of the Work to the Air Force.

XXXIII. ACCESS TO INFORMATION

115 Respondent shall provide to EPA, DTSC and RWQCB upon request, copies of all documents and information within Respondent's possession or control or that of its contractors or agents relating to activities at the Property or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA, DTSC and RWQCB for purposes of investigation, information gathering, or testimony, Respondent's employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

a. Business Confidential and Privileged Documents. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA, DTSC and RWQCB under this Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, DTSC and RWQCB or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e) (7) of CERCLA or

40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.

b. The Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege in lieu of providing documents, Respondent shall provide EPA, DTSC and RWQCB with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of the Order shall be withheld on the grounds that they are privileged.

c. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXXIV. RETENTION OF RECORDS

116. Until 10 years after the Respondent's receipt of EPA's notification pursuant to Paragraph 63.c. of Section XVII (Certification of Completion of the Work), Respondent, or its successor, shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) and all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work, provided, however, that Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

117. At the conclusion of this document retention period, Respondent, or its successor, shall notify EPA, DTSC and RWQCB at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA or DTSC, Respondent shall deliver any such records or documents to EPA, DTSC and RWQCB. The Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege, Respondent shall provide EPA, DTSC and RWQCB with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Respondent. However, no documents, reports or other information

created or generated pursuant to the requirements of the Order shall be withheld on the grounds that they are privileged.

XXXV. NOTICES AND SUBMISSIONS

118. Whenever under the terms of this Order, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Order with respect to EPA, DTSC, RWQCB and the Respondent, respectively.

As to the EPA:

Director, Superfund Division
United States Environmental Protection Agency
Region 9
75 Hawthorne St.
San Francisco, CA 94105

and

Yvonne Fong
EPA Project Coordinator, SFD-8-1
United States Environmental Protection Agency
Region 9
75 Hawthorne St.
San Francisco, CA 94105

As to the Regional Financial Management Officer:

Chief, Cost Accounting
United States Environmental Protection Agency
Region 9
75 Hawthorne St.
San Francisco, CA 94105

As to the California Department of Toxic Substances Control:

Anthony J. Landis, P.E.
Chief
Northern California Operations

Office of Military Facilities
Department of Toxic Substance Control
8800 Cal Center Drive
Sacramento, CA 95826

and

Christopher P. Sherman, P.E.
Project Manager
Office of Military Facilities
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826

As to the Central Valley Regional Water Quality Control Board:

Pamela C. Creedon
Executive Officer
California Regional Water Quality Control Board, Central Valley Region
11020 Sun Center Drive, # 200
Rancho Cordova, CA 95670

and

Marcus Pierce
Project Coordinator
California Regional Water Quality Control Board, Central Valley Region
11020 Sun Center Drive, # 200
Rancho Cordova, CA 95670

As to the Respondent:

McClellan Business Park LLC
3140 Peacekeeper Way
McClellan, CA 95652
Attention: President and General Counsel

and

Alan Hersh
McClellan Business Park LLC
3140 Peacekeeper Way
McClellan, CA 95652

XXXVI. APPENDICES

119. The following appendices are attached to and incorporated into this Order:

A. Legal description of the Property

- B. Map of the Property
- C. Statement of Work
- D. Known Conditions Documentation

XXXVII. COMMUNITY RELATIONS

120. Respondent shall propose to EPA, DTSC, and RWQCB its participation in the community relations plan to be developed by EPA, after consultation with DTSC and RWQCB. EPA, after consultation with DTSC and RWQCB, will determine the appropriate role for the Respondent under the Plan. Respondent shall also cooperate with EPA, DTSC, and RWQCB in providing information regarding the Work under this Order to the public. As requested by EPA, Respondent shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Property or the Work being conducted under this Order.

XXXVIII. MODIFICATIONS

121. EPA, after consultation with DTSC and RWQCB, may determine that in addition to tasks defined in the SOW, or initial approved work plans, other additional work may be necessary to accomplish the objectives of any response action conducted under this Order. EPA, after consultation with DTSC and RWQCB, may request in writing that Respondent perform these response actions and Respondent shall confirm its willingness to perform the additional work, in writing, to EPA, DTSC, and RWQCB within 14 days of receipt of EPA's request, or Respondent may invoke dispute resolution in accordance with Section XXIII. Subject to EPA resolution of any dispute, Respondent shall implement the additional tasks which EPA, after consultation with DTSC and RWQCB, determines are necessary. Any other requirements of this Order may be modified in writing by mutual agreement of the parties.

122. If Respondent seeks permission to deviate from any approved work plan or schedule or the SOW, Respondent's Project Coordinator shall submit a written request to EPA, DTSC and RWQCB for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving written approval from the EPA Project Coordinator, after consultation with the DTSC Project Coordinator and the RWQCB Project Coordinator.

123. No informal advice, guidance, suggestion, or comment by the EPA, DTSC, or RWQCB Project Coordinator or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified by consent of the Parties.

124. This Order shall be made available for a period of not less than thirty (30) days for public notice and comment. The United States, DTSC and RWQCB reserve the right to withdraw or withhold their consent if the comments regarding the Order disclose facts or considerations which indicate that the Order is inappropriate, improper, or inadequate.

XXXIX. TERMINATION

125. This Order shall terminate under one or more of the following circumstances:

- a. Upon a Finding of Default by EPA, in consultation with DTSC and RWQCB, under Paragraph 112;
- b. Upon EPA's Certification of Completion of the Work, pursuant to Paragraph 63; or
- c. Upon termination of the ESCA, unless EPA has already issued the Certification of Completion of Remedial Action pursuant to Paragraph 62.

XXXX. EFFECTIVE DATE

126. This Order shall be effective when EPA issues written notice to Respondent that each of the following conditions have been met: a.) the expiration of the public notice and comment period for this Order and EPA's determination that comments received, if any, do not require EPA to modify or withdraw from this Order; b.) the completion of the public comment process on the FOSET; c.) the execution of the ESCA and the Amended FFA; and d.) EPA's approval of and the Governor of the State of California's concurrence with the Covenant Deferral Request.

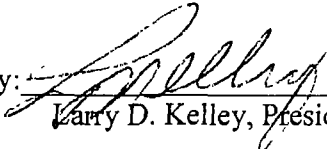
ADMINISTRATIVE ORDER ON CONSENT
FOR RI/FS AND RD/RA FOR CLEANUP
OF PORTIONS OF THE FORMER MCCLELLAN AFB

For Respondent:

Agreed this 5 day of JANUARY, 2007.

McClellan Business Park LLC,
a Delaware limited liability company

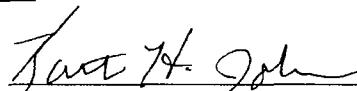
By: LK McClellan, LLC,
a California limited liability company
Its: Member

By: 
Larry D. Kelley, President

ADMINISTRATIVE ORDER ON CONSENT
FOR RI/FS AND RD/RA FOR CLEANUP
OF PORTIONS OF THE FORMER MCCLELLAN AFB

For EPA:

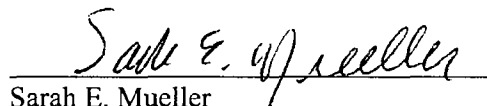
Agreed this 22nd day of January, 2007.



Kathleen Johnson
Branch Chief, Federal Facility and Site Cleanup
Branch
U.S. Environmental Protection Agency
Region IX
75 Hawthorne St.
San Francisco, CA 94105

1/18/07

Date

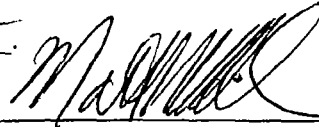


Sarah E. Mueller
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region IX
75 Hawthorne St.
San Francisco, CA 94105

ADMINISTRATIVE ORDER ON CONSENT
FOR RI/FS AND RD/RA FOR CLEANUP
OF PORTIONS OF THE FORMER MCCLELLAN AFB

For the United States:

Agreed this 2nd day of March, 2007.

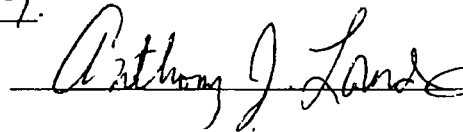


Matthew J. McKeown
Acting Assistant Attorney General
Environment and Natural Resources Section
U.S. Department of Justice
Washington, D.C. 20530

ADMINISTRATIVE ORDER ON CONSENT
FOR RI/FS AND RD/RA FOR CLEANUP
OF PORTIONS OF THE FORMER MCCLELLAN AFB

For DTSC:

Agreed this 4 day of January, 2007.

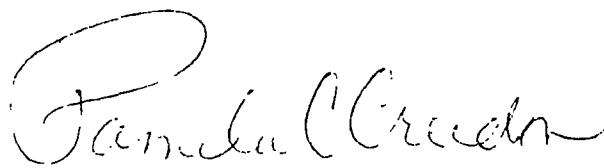
A handwritten signature in black ink, appearing to read "Anthony J. Landis", written over a horizontal line.

Anthony J. Landis, P.E.
Chief
Northern California Operations
Office of Military Facilities
California Department of Toxic
Substances Control
8800 Cal Center Drive
Sacramento, CA 95826

ADMINISTRATIVE ORDER ON CONSENT
FOR RI/FS AND RD/RA FOR CLEANUP
OF PORTIONS OF THE FORMER MCCLELLAN AFB

For RWQCB:

Agreed this 16 day of January, 2007.

A handwritten signature in cursive script, reading "Pamela C. Creedon". The signature is written in dark ink and is positioned above a horizontal line.

PAMELA C. CREEDON
Executive Officer
California Regional Water Quality
Control Board, Central Valley Region
11020 Sun Center Drive, # 200
Rancho Cordova, CA 95670